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IN THE

Supreme Court of the United States

October Term, 1949

No. 103

ESTATE OF GILLIAT G. SCHROEDER, DECEASED, LOUISA R. SCHROEDER AND HELEN S. CROLL, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petitioners' Supplemental Brief in Support of Petition for Certiorari to the United States Court of Appeals for the Second Circuit.

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STATEMENT OF MATTERS ARISING SINCE THE FILING OF THE PETITION.

On September 8, 1949, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, formally adopted and promulgated a Treasury Regulation which has an important bearing on this case. (T. D. 5741; Federal Register Volume 14, No. 174, p. 5536, Par. (E), Issue of September 9, 1949).

This new Regulation provides:

> "In the case of a decedent who died on or before January 17, 1949, the date of the decision of the United States Supreme Court in *Commissioner v. Estate of Francois L. Church*, 335 U. S. 632, property transferred by the decedent shall not be included in his gross estate under this section if the decedent's only right or interest in the property consisted of an estate for his life."

It is noted that the Regulation as thus adopted completely omits any provision making the Commissioner's determination "conclusive". In fact, it does not provide for a determination by the Commissioner at all, but on the contrary states, simply and flatly, that the property shall not be taxed if the "decedent's only right or interest in the property consisted of an estate for his life."

ARGUMENT

In officially promulgating this Regulation, the Treasury Department has established a rule of general application under the Estate tax statute. It has thereby withdrawn entirely the only foundation upon which the decision below rested. Compare *Carpenter v. Wabash Railway Company*, 309 U. S. 23. At the same time, by reason of the deletion of those provisions in the proposed Regulation which involved an assertion by the Commissioner of the ultimate power to decide questions of law, the main point raised by the Petition for certiorari has been resolved favorably to the petitioners and has thus disappeared from the case.

In this state of the record, the only point now remaining is whether as a matter of law decedent had a possibility of reverter in the inter vivos trust which he established in 1928. This point was not passed upon by the Court below;

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and it will be recalled that the judgment of the Tax Court was favorable to petitioners.

Under the circumstances petitioners respectfully suggest to this Court that the interests of justice will be served if this Court should now issue a single order granting the writ of certiorari and remanding the case to the Court below with directions to determine whether or not the newly promulgated Treasury Regulation applies to this case so as to exempt petitioners from the asserted tax liability. The most elementary considerations of fairness clearly demand that this point be decided before the case is finally disposed of; and if the order suggested by petitioners were issued, no hearing, argument or further proceedings in this court would be required. All questions of New York law which now remain undecided could be then decided by the Court of Appeals.

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